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4 **UNITED STATES DISTRICT COURT**

5 **DISTRICT OF NEVADA**

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7 NATIONSTAR MORTGAGE LLC,  
8 FEDERAL HOME LOAN MORTGAGE  
9 CORPORATION,

10 Plaintiff(s),

11 v.

12 COPPER CREEK HOMEOWNER  
13 ASSOCIATION,  
14 TRAVERTINE LANE TRUST  
15 ATC ASSESMENT COLLECTION GROUP,  
16 LLC

16 Defendant(s).

Case No. 2:17-cv-02624-RFB-BNW

**ORDER**

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18 **I. INTRODUCTION**

19 Before the Court is Defendant Travertine Lane Trust's Second Motion to Dismiss  
20 Complaint, Defendant Travertine Lane Trust's Motion for Summary Judgment, and Plaintiffs  
21 Federal Home Loan Mortgage Corporation and National Star Mortgage LLC's Counter Motion  
22 for Summary Judgment. ECF Nos. 35, 38, 40. For the following reasons, the Court grants  
23 Plaintiffs' Motion for Summary Judgment and denies the other motions.  
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25 **II. PROCEDURAL BACKGROUND**

26 Plaintiffs Nationstar Mortgage LLC ("Nationstar") and Federal Home Loan Mortgage  
27 Corporation ("Freddie Mac") (collectively "Plaintiffs") filed their complaint against Defendants  
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1 Copper Creek Homeowners Association, Travertine Lane Trust (“Travertine”), and ATC  
2 Assessment Collection Group, LLC on October 9, 2017. ECF No. 1. In their complaint, Plaintiffs  
3 stated eight causes of action: 1) declaratory relief under 12 U.S.C § 4617(j)(3); 2) quiet title under  
4 12 U.S.C. § 4617(j)(3); 3) declaratory relief under the Fifth and Fourteenth Amendments; 4) quiet  
5 title under the Fourth and Fifth Amendments; 5) a declaratory judgment; 6) breaches of section  
6 116.1113 of the Nevada Revised Statutes (“NRS”) and Covenants, Conditions and Restrictions  
7 (“CCR&Rs”), 7) wrongful foreclosure, and 8) injunctive relief. On March 30, 2018, the action was  
8 dismissed without prejudice as to ATC Assessment Collection Group, LLC and Copper Creek  
9 Homeowners Association. ECF No. 20.

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12 Plaintiffs filed a motion for summary judgment on May 7, 2018. ECF No. 22. Travertine  
13 filed for summary judgment on June 6, 2018. ECF No. 26. On July 13, 2018 the Court stayed the  
14 case pending the Nevada Supreme Court’s response to a question this Court certified regarding the  
15 notice requirements of NRS 116. The Court also denied all pending dispositive motions without  
16 prejudice. ECF No. 32. The Court lifted the stay on August 23, 2018 and ordered that all dispositive  
17 motions be filed no later than September 24, 2018. ECF No. 34. On September 5, 2018, Travertine  
18 filed a second motion to dismiss the complaint. ECF No. 35. Travertine also filed a motion for  
19 summary judgment on October 3, 2018. ECF No. 38. Plaintiffs filed a counter motion for summary  
20 judgment on October 3, 2018. ECF No. 40. All motions have been fully briefed. ECF Nos. 39, 41–  
21 43, 45, 46. On July 23, 2019, Movant Federal Housing Finance Agency filed an amicus curiae  
22 brief in support of Plaintiffs’ counter motion. ECF No. 51.

### 23 24 25 **III. FACTUAL BACKGROUND**

26 The Court makes the following findings of undisputed and disputed facts.<sup>1</sup>

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<sup>1</sup> The Court takes judicial notice of the publicly recorded documents related to the deed of trust and the foreclosure as well as Freddie Mac’s Single-Family Servicing Guide. Fed. R. Evid. 201 (b), (d); Berezovsky v. Moniz, 869 F.3d

1                   **a. Undisputed Facts**

2           This matter concerns a nonjudicial foreclosure on a property located at 6777 Travertine  
3 Lane, Las Vegas, NV 89122 (the “property”). The property sits in a community governed by the  
4 Copper Creek Homeowners Association (the “HOA”). The HOA requires its community members  
5 to pay HOA dues.  
6

7           On or about October 18, 2008, nonparty Alberto Marin obtained a loan from Taylor, Bean  
8 & Whittaker Mortgage Corp. in the amount of \$218,000. The deed of trust was recorded against  
9 the property. The deed listed Alberto Marin as the borrower, Taylor, Bean & Whittaker Mortgage  
10 Corp. as the lender, and Mortgage Electronic Registration Systems, Inc. (“MERS”) as the  
11 beneficiary.  
12

13           Marin fell behind on HOA dues. The HOA, through its agent, recorded a notice of  
14 delinquent assessment lien, followed by a notice of default and election to sell, and finally a notice  
15 of foreclosure sale on October 11, 2012. On or about November 6, 2012, the HOA held a  
16 foreclosure sale of the property under NRS Chapter 116. Travertine purchased the property as  
17 evidenced by a trustee’s deed upon sale recorded on November 26, 2012.  
18

19           However, Freddie Mac previously purchased the note and deed of trust in November 2007.  
20 While its interest was never recorded under its name, Freddie Mac continued to maintain its  
21 ownership of the note and the deed of trust at the time of the foreclosure. At the time of the  
22 foreclosure sale, Ocwen served as the record beneficiary of the deed of trust as servicer for Freddie  
23 Mac. Ocwen then assigned the deed of trust to Nationstar as recorded on June 3, 2013.  
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27       923, 932–33 (9th Cir. 2017) (judicially noticing the substantially similar Fannie Mae Guide); Lee v. City of Los  
28       Angeles, 250 F.3d 668, 690 (9th Cir. 2001) (permitting judicial notice of undisputed matters of public record).

1 The relationship between Freddie Mac and its servicers is governed by Freddie Mac 's  
2 Single-Family Servicing Guide ("the Guide"). The Guide provides that servicers may act as record  
3 beneficiaries for deeds of trust owned by Freddie Mac. It also requires that servicers assign the  
4 deeds of trust to Freddie Mac on Freddie Mac 's demand. The Guide states:

6 The Seller/Servicer is not required to prepare an assignment of the Security  
7 Instrument to the Federal Home Loan Mortgage Corporation (Freddie Mac).  
8 However, Freddie Mac may, at its sole discretion and at any time, require a  
9 Seller/Servicer, at the Seller/Servicer's expense, to prepare, execute and/or record  
assignments of the Security Instrument to Freddie Mac.

10 The Guide also allows for a temporary transfer of possession of the note when necessary  
11 for servicing activities, including when "[s]eller/servicers may need to obtain physical or  
12 constructive possession of a Note." The temporary transfer is automatic and occurs at the  
13 commencement of the servicer's representation of Freddie Mac. The Guide also includes a chapter  
14 regarding how servicers should manage litigation on behalf of Freddie Mac. See Guide at 9402.2  
15 ("Routine and non-routine litigation"). But the Guide clarifies that the Servicer must "follow  
16 prudent business practices" to ensure that note is "identif[ied] as a Freddie Mac asset." Finally,  
17 under the Guide, "all documents in the mortgage file . . . will be, and will remain at all times, the  
18 property of Freddie Mac."

21 In 2008, Congress passed the Housing and Economic Recovery Act ("HERA"), 12 U.S.C.  
22 § 4511 *et seq.*, which established the Federal Housing Finance Agency ("FHFA"). HERA gave  
23 FHFA the authority to oversee the government-sponsored enterprises Fannie Mae and Freddie Mac  
24 (collectively, the "GSEs"). In accordance with its authority, FHFA placed Freddie Mac under its  
25 conservatorship in 2008. Neither FHFA nor Freddie Mac consented to the foreclosure  
26 extinguishing Freddie Mac 's interest in the property in this matter.

#### 28 **b. Disputed Facts**

1           The parties dispute whether Freddie Mac had actual ownership of the deed of trust at the  
2 time of the sale.

#### 3           **IV.     LEGAL STANDARD**

##### 4                   **i.   Motion to Dismiss**

5           In order to state a claim upon which relief can be granted, a pleading must contain “a  
6 short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ.  
7 P. 8(a)(2). In ruling on a motion to dismiss for failure to state a claim, “[a]ll well-pleaded  
8 allegations of material fact in the complaint are accepted as true and are construed in the light  
9 most favorable to the non-moving party.” Faulkner v. ADT Security Servs., Inc., 706 F.3d 1017,  
10 1019 (9th Cir. 2013). To survive a motion to dismiss, a complaint must contain “sufficient factual  
11 matter, accepted as true, to state a claim to relief that is plausible on its face,” meaning that the  
12 court can reasonably infer “that the defendant is liable for the misconduct alleged.” Ashcroft v.  
13 Iqbal, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted).

##### 14                   **ii.   Summary Judgment**

15           Summary judgment is appropriate when the pleadings, depositions, answers to  
16 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no  
17 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of  
18 law.” Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When  
19 considering the propriety of summary judgment, the court views all facts and draws all  
20 inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747  
21 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the non-moving party “must  
22 do more than simply show that there is some metaphysical doubt as to the material facts . . . .  
23 Where the record taken as a whole could not lead a rational trier of fact to find for the  
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1 nonmoving party, there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007)  
2 (alteration in original) (internal quotation marks omitted). It is improper for the Court to resolve  
3 genuine factual disputes or make credibility determinations at the summary judgment stage.  
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5 Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).

## 6 **V. DISCUSSION**

7 The Court finds that the claims in this case may be resolved by answering the following  
8 questions: a) whether Section 4617 of HERA applies to claims brought by Freddie Mac and b)  
9 whether Freddie Mac’s claims under Section 4617 of HERA are subject to a six-year statute of  
10 limitations. The Court answers in the affirmative for both. The relevant portion of the statute is as  
11 follows:  
12

13 Notwithstanding any provision of any contract, the applicable statute of limitations with  
14 regard to any action brought by the [Federal Housing Finance] Agency as conservator or  
15 receiver shall be--

16 (i) in the case of any contract claim, the longer of--

17 (I) the 6-year period beginning on the date on which the claim accrues; or

18 (II) the period applicable under State law; and

19 (ii) in the case of any tort claim, the longer of--

20 (I) the 3-year period beginning on the date on which the claim accrues; or

21 (II) the period applicable under State law.

22 12 U.S.C. § 4617(b)(12)(A).

23 The Court finds that the claims brought by Freddie Mac in this case should construed as  
24 claims brought by or on behalf of the FHFA. Pursuant to HERA, Freddie Mac was placed into  
25 conservatorship by FHFA in 2008. As the Ninth Circuit has explained, this means that “the Agency  
26 [FHFA] acquired Freddie Mac’s rights, titles, powers, and privileges with respect to its assets for  
27 the life of the conservatorship.” Berezovsky v. Moniz, 869 F.3d 923, 927 (9th Cir. 2017) (internal  
28 citations omitted). The foreclosure sale in this case took place at a time that Freddie Mac was in  
conservatorship. Freddie Mac’s interest in the subject property was therefore an asset of the FHFA

1 in conservatorship at the time of the foreclosure sale. Freddie Mac is still under the conservatorship  
2 of the FHFA. Thus, the Federal Foreclosure Bar applies in this case since, as the Ninth Circuit  
3 found in Berezovsky, Section 4617, “applies to ‘any case’ in which the Agency serves as  
4 conservator.” Id. (citing to Section 4617(j)(1)) (emphasis added). Freddie Mac, as an entity still  
5 within FHFA’s conservatorship, and Nationstar as its servicer, are thus entitled to use HERA’s  
6 extender statute.  
7

8 Further, the Court finds that the six-year statute of limitations for contract claims within  
9 Section 4617, rather than the shorter three-year limitations period for tort claims, applies. “If a  
10 claim is dependent upon the existence of an underlying contract, the claim sounds in contract, as  
11 opposed to tort.” Stanford Ranch, Inc. v. Maryland Cas. Co., 89 F.3d 618, 625 (9th Cir. 1996). In  
12 this case, the quiet title claim is dependent upon the underlying mortgage lien, which is itself based  
13 upon an interest created by a mortgage contract. Thus the Court will apply the six-year statute of  
14 limitations within Section 4617 to the claims.<sup>2</sup>  
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16 For statute of limitations calculations, the clock begins on the day the cause of action  
17 accrued. Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). A cause of action accrues “when a suit  
18 may be maintained thereon.” Id. In this case, the foreclosure sale was on November 6, 2012. The  
19 Court thus finds that all of Plaintiffs’ claims began to run on the date of the foreclosure sale as  
20 these claims all stem from issues or disputes regarding the sale and its effect. Plaintiffs filed their  
21 complaint on October 9, 2017—just under five years later.  
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24 <sup>2</sup> As the Court has found that these claims should be construed as claims brought by the  
25 FHFA, the Court is required in any case to construe the limitations period in its favor. “To the  
26 extent that a statute is ambiguous in assigning a limitations period for a claim,” it “must receive a  
27 strict construction in favor of the Government.” Fed. Deposit Ins. Corp. v. Former Officers &  
28 Directors of Metro. Bank, 884 F.2d 1304, 1309 (9th Cir. 1989) (quoting Badaracco v.  
Commissioner, 464 U.S. 386, 391 (1984)).

1 Having found that Plaintiffs' claims are timely filed, the Federal Foreclosure Bar, 46  
2 U.S.C. § 4617(j)(3) thus resolves this matter. The Ninth Circuit has held that the Federal  
3 Foreclosure Bar preempts foreclosures conducted under NRS Chapter 116 from extinguishing a  
4 federal enterprise's property interest while the enterprise is under FHFA's conservatorship unless  
5 FHFA affirmatively consented to the extinguishment of the interest. Berezovksy, 869 F.3d at 927–  
6 31. Under Berezovksy, summary judgment based on the Federal Foreclosure Bar is warranted if  
7 the evidence establishes that the enterprise had an interest in the property at the time of the HOA  
8 foreclosure sale. Id. at 932– 33. The Court finds that the evidence establishes that Freddie Mac had  
9 an interest in the property at the time of the HOA foreclosure sale.  
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12 The Court considers if Plaintiffs provided the proper foundation and sufficient evidence to  
13 show that Freddie Mac acquired a property interest prior to the foreclosure sale. To establish  
14 Freddie Mac's property interest, Plaintiffs attach printouts from Freddie Mac's MIDAS electronic  
15 database. The printouts are accompanied by a declaration of Jeffery K. Jenkins, an employee of  
16 Freddie Mac. Jenkins translates the printouts and identifies the Guide. In doing so, he specifically  
17 declares that "Freddie Mac's systems and databases are maintained and kept in the course of  
18 Freddie Mac's regularly conducted business activity, and it is the regular practice of Freddie Mac  
19 to keep and maintain information regarding loans owned by Freddie Mac in Freddie Mac's  
20 databases." He also specifically identifies the portions of the printouts that detail the date that  
21 Freddie Mac acquired the note and the deed of trust and that recount the servicing history of the  
22 loan.  
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25 Travertine argues that Jenkins cannot sufficiently authenticate the database entries because  
26 he does not state how he knows the entries in Freddie Mac's systems to be true, and that it is "pure  
27 speculation" on Jenkin's part as to whether screenshots printed in January 2018 reflect the content  
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1 of the MIDAS system on the date of the foreclosure sale in November 6, 2012. Travertine further  
2 argues Plaintiffs have failed to produce documents and information regarding their claim that  
3 Freddie Mac owned the deed of trust.

4  
5 The Court finds these arguments to be unavailing. It is not necessary for individuals to  
6 testify to having personal knowledge as to the accuracy of the entries in a database. U-Haul Intern.,  
7 Inc. v. Lumbermens Mut. Cas. Co., 576 F.3d 1040, 1044 (9th Cir. 2009). Rather, it is merely  
8 required that the authenticating declarant has personal knowledge of the company's recordkeeping  
9 practices. Id. Jenkins states his familiarity with both Freddie Mac's MIDAS system and the Guide  
10 in his declaration. The printouts also support the finding that there was a servicing relationship  
11 between Freddie Mac and Ocwen at the time of the foreclosure sale. The Court finds this to be  
12 sufficient, as has the Ninth Circuit and the Nevada Supreme Court, with substantially similar  
13 evidence. See, e.g., Berezovsky, 869 F.3d at 932 – 33 (allowing the Guide, employee declarations  
14 and computer screenshots to establish Freddie Mac's property interest); Fed. Home Loan Mortg.  
15 Corp. v. SFR Investments Pool 1, LLC, 893 F.3d 1136, 1149–50 (9th Cir. 2018) (same); Nationstar  
16 Mortg., LLC v. Guberland LLC-Series 3, 420 P.3d 556 (Nev. 2018) (unpublished) (Nevada  
17 Supreme Court allowing same evidence to establish an enterprise's property interest).

18  
19 Travertine also argues that Freddie Mac cannot have a property interest because it was not  
20 the recorded beneficiary on the deed of trust on the date of the foreclosure sale. The Court  
21 disagrees. The Nevada Supreme Court case SFR Investments Pool 1, LLC v. Green Tree Servicing,  
22 LLC, forecloses this argument. 432 P.3d 718 (Nev. 2018) (unpublished) (holding the state  
23 recording statutes, prior to the 2011 amendments, do not require an assignment of beneficial  
24 interests under a deed of trust to be recorded and failure to record does not prevent an assignee  
25 from enforcing its interest later); see also Berezovsky, 869 F.3d at 932 (discussing the interplay of  
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1 the Federal Foreclosure Bar and NRS 106.210). Because Freddie Mac acquired the loan in 2007,  
2 the Nevada recording statutes did not require Freddie Mac to record the assignment of beneficial  
3 interests in the deed of trust in its name. SFR Investment Pool 1, 432 P.3d 718. Travertine Lane's  
4 recordation argument fails accordingly.

5  
6 Based on the foregoing, the Court grants summary judgment in favor of Plaintiffs and  
7 declares that the Federal Foreclosure Bar prevented the foreclosure sale from extinguishing  
8 Freddie Mac's interest in the property. The Court finds this holding to be decisive as to all claims  
9 in this matter and dismisses the remaining claims as a result.

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11 **VI. CONCLUSION**

12  
13 **IT IS THEREFORE ORDERED** that Plaintiffs' Counter Motion for Summary Judgment  
14 (ECF No. 40) is GRANTED as to its second cause of action of quiet title against Defendant  
15 Travertine Lane Trust. The Court finds that Defendant Travertine Lane Trust acquired the Property  
16 subject to Freddie Mac's deed of trust.

17  
18 **IT IS FURTHER ORDERED** that Defendant Travertine Lane Trust's Motion for  
19 Summary Judgment, (ECF No. 38) and Defendant Travertine Lane Trust's Motion to Dismiss  
20 (ECF No. 35) are DENIED.

21 The Clerk of the Court is instructed to enter judgment for Plaintiffs accordingly and to  
22 close the case.

23 DATED: September 29, 2019.

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26 **RICHARD F. BOULWARE, II**  
27 **UNITED STATES DISTRICT JUDGE**  
28